Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Accounting Safeguards	)	**CC Docket No. 96-150**
Under the Telecommunications Act of 1996	)	
	)	
Section 272(d) Biennial Audit Procedures	)	
	)	

WORLDCOM COMMENTS

WorldCom, Inc. (WorldCom) hereby submits its comments on the Section 272(d) audit of Verizon's interLATA operations.[1]

I. Verizon Has Violated Several Provisions of Section 272 of the Act

As is discussed in more detail below, the audit report shows that Verizon has violated several requirements of Section 272 or Commission rules promulgated thereunder. In light of the violations revealed by the audit report, the Commission should initiate enforcement action against Verizon pursuant to Section 271(d)(6) of the Act.[2]

[1] CC Docket No. 96-150, PricewaterhouseCoopers, Report of Independent Accountants on Applying Agreed-Upon Procedures, attachment to letter from PricewaterhouseCoopers, LLP to William F. Caton, FCC, February 6, 2002.
[2] Section 271(d)(6) permits the Commission to take enforcement action whenever a BOC has ceased to meet any of the conditions required for approval of a Section 271 application.

First, Verizon should be sanctioned for failing to collect and retain access service provisioning data as required by the New York 271 Order.[3] In the New York 271 Order, the Commission's finding that Verizon met the requirements of Section 271(d)(3)(B) of the Act was based in part on Verizon's commitment "to provide accurate data regarding service intervals" in the format specified in the Declaration of Susan J. Browning (Browning Declaration) attached to Verizon's application.[4] The audit report shows, however, that Verizon failed to live up to that commitment. According to the audit report, certain reports "were [initially] unavailable prior to August, 2000," presumably because Verizon failed to measure or maintain service interval data prior to August, 2000. The audit report's vague reference to "further efforts within the company" does not adequately explain how Verizon belatedly produced the "query reports" that are the basis for the data shown in the audit report.[5] And, as noted by the Joint Oversight Team, the interval data that Verizon belatedly assembled is not in the format that Verizon specified in the Browning Declaration.[6]

Furthermore, because Verizon failed to retain the underlying transaction data, the auditors could not verify the service interval data shown in the audit report. The necessity of such verification was made all too clear in a recent SBC merger conditions compliance audit, which found that errors in SBC's reports may have had an impact on

[3] Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region InterLATA Service in the State of New York, Memorandum Opinion and Order, 15 FCC Rcd 3953 (1998).
[4] New York 271 Order at ¶ 418 n.1290.
[5] Audit report, Appendix A at 32.
[6] Observation of the Federal/State Joint Audit Team for the Verizon Section 272 Biennial Audit, attachment.

the company's calculation of penalty payments made to the U.S. Treasury.[7] Absent verification of the data in Table 14a, the Commission is unable to establish that Verizon has complied with its commitment, stated in its New York Section 271 application, to provide "accurate data regarding service intervals . . ."[8] Among other things, the audit report provides no evidence that the service interval data shown in the audit report accurately reflect the stated service interval definitions, i.e., the business rules, including any exclusions.

Verizon's failure to retain the underlying transaction data is a violation of Section 272(d)(3) of the Act. Pursuant to Section 272(d)(3), the independent auditor, the Commission and the state commission shall have access to the "records of each company and of its affiliates necessary to verify transactions conducted with that company that are relevant to the specific activities permitted" under Section 272.[9]

Second, the Commission should initiate enforcement action against Verizon because the audit report shows that Verizon has violated the nondiscrimination requirements of Sections 272(c)(1) and 272(e)(1) of the Act. Table 14a of the audit report shows, for example, that the average installation interval for special access services provided to Verizon long distance affiliates was shorter than the "non-affiliate" interval in seven of the nine months covered by the audit report. In addition, the data in Table 14a shows that Verizon's provisioning of special access services to non-affiliated carriers deteriorated sharply once Verizon was granted Section 271 authority in New York. For example, the average installation interval increased from 19 days in January

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[7] CC Docket No. 98-141, Ernst &Young, Report of Independent Accountants at 4 (attached to Letter from Sandra L. Wagner, Vice President, Federal Regulatory, SBC, to Magalie Salas, FCC, Sept. 4, 2001).

to 29 days in July. The deterioration in Verizon's provisioning performance harmed non-affiliated carriers' business reputation just as Verizon began to compete in the interLATA market.

The discrepancy between "Verizon" and "non-affiliate" service intervals is particularly apparent for PIC changes. The audit report shows that Verizon processed PIC changes more rapidly for its own affiliates in every month between January and September, 2000. Verizon seeks to excuse its discriminatory provision of PIC changes by claiming that the differential in provisioning performance has no "practical significance."[10] But Section 272(e)(1) prohibits any discrimination in favor of the BOC's affiliate;[11] the BOC cannot self-define an acceptable degree of discrimination based on assertions of "practical significance" or other factors. Furthermore, Verizon fails to explain why the PIC-change performance would differ so markedly if, as it claims, "Verizon treats all mechanical PIC orders using the same systems and procedures for all carriers . . . ."[12] The differential performance may be an indicator of superior access to Verizon's CARE system or may indicate violations of other Commission rules, such as the requirement that PIC freezes be implemented or lifted on a nondiscriminatory basis.[13]

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[8] New York 271 Order at ¶ 418 n.1290.
[9] 47 U.S.C. § 272(d).
[10] Letter from Joseph DiBella, Regulatory Counsel, Verizon, to Joseph Paretti, FCC, and Martin Kehoe, PricewaterhouseCoopers, June 11, 2001, at 7 (Verizon Response).
[11] Non-Accounting Safeguards Order at ¶ 240 ("Section 272(e)(1) unambiguously states that a BOC must fulfill requests from unaffiliated entities at least as quickly as it fulfills its own or its affiliates' requests. To implement this statutory directive, we conclude that, for equivalent requests, the response time a BOC provides to unaffiliated entities should be no greater than the response time it provides to itself or its affiliates.")
[12] Verizon Response at 7.
[13] Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1579-

Third, the audit report shows that Verizon violated Section 272(c)(1) by discriminating in favor of its Section 272 affiliates in the procurement of certain services during a strike in August, 2000. The audit report shows that the Verizon Section 272 affiliates provided operator services and security escort services to the Verizon BOCs during the strike.[14] The audit report also shows that the Verizon BOCs procured the strike-related services from the Section 272 affiliates without using the written procurement procedures noted by the auditors under Objective VIII.[15] As the Commission explained in the Non-Accounting Safeguards Order, failure to comply with pre-existing procurement procedures makes it more difficult for a BOC to rebut allegations that it gave preference to its affiliate in the procurement of services in violation of Section 272(c)(1).[16]

Fourth, the audit report shows that Verizon failed to comply with the Commission's affiliate transactions rules, and thus failed to comply with 272(c)(2) of the Act. According to the audit report, Verizon did not carry out the fully distributed cost (FDC)/fair market value (FMV) comparison required by the Commission's affiliate transaction rules for 34 out of the 70 BOC/affiliate transactions sampled by the auditors.[17] Similarly, for several transactions between Verizon ILECs and VSSI, the

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1580 (1998).

[14] Audit Report, Appendix A, Tables No. 1 and 7

[15] Audit Report, Appendix A, page 27, procedures 2 and 3. Although the audit report states that the Section 272 affiliates provided strike-related services to the BOCs, Objective VIII, procedure 3 states that "[m]anagement indicated that there were no procurement awards by the BOCs to the Section 272 affiliates and no bids submitted by the Section 272 affiliates to the BOCs during this period," i.e., January 3, 2000 through September 30, 2000, which included the strike dates.

[16] Non-Accounting Safeguards Order at ¶ 235.

[17] Audit Report, Appendix A, at 21.

auditors were unable to verify that Verizon had performed the required FDC/FMV comparison.[18]

In its response to the audit report, Verizon states that it could not perform the FDC/FMV calculation "because the related services were unique to the company" and claims that the affiliate transactions rules "provide[] no clear guidance for situations where [the FMV] determination is not possible."[19] There is no merit to Verizon's attempt to excuse its failure to comply with the affiliate transactions rules. First, creating a loophole for allegedly "unique" services would eviscerate the affiliate transactions rules, particularly in light of the Verizon Section 272 affiliates' heavy reliance on Verizon BOC-provided services. In any event, Verizon could be exempted from the requirement to make a good faith estimate of FMV only if it had first sought, and been granted, a waiver of Section 32.27(c).[20] Given that the agreements governing the transactions at issue were entered into in 1999,[21] Verizon had ample opportunity to seek such a waiver. In the absence of a waiver of Section 32.27(c), Verizon's decision to value the transactions at issue at FDC violates the Section 272(b)(5) requirement that transactions be conducted "on an arm's length basis"[22] and the Section 272(c)(2) requirement that BOCs account for all transactions in accordance with accounting principles designated or approved by the Commission.[23]

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[18] Audit Report, Appendix F at 22-23.
[19] Verizon Response at 5.
[20] See, e.g., Southern New England Telephone Co.; Petition for Waiver of Section 32.27(c) of the Commission's Rules, 14 FCC Rcd 6231 (1999).
[21] See, e.g., Table No. 10, Item 1, Business Service Center/Account Team Center (Amendment No. 1 to Marketing and Sales Agreement, http://verizonld.com/regnotices/detail.cfm?ContractID=115&OrgID=1).
[22] Accounting Safeguards Order at ¶ 147.
[23] 47 U.S.C. § 272(c)(2).

Finally, the audit report shows that Verizon failed to post information concerning affiliate transactions on its website in an accurate and timely manner, in violation of the Accounting Safeguards Order[24] and the Section 272(b)(5) requirement that transactions "be reduced to writing and available for public inspection."[25] The auditors found that 304 of 859 web postings contained discrepancies as compared to the written agreements or did not contain sufficiently detailed information.[26] Similarly, the auditors found that 51 web postings of the 459 contract summaries posted in 2000 were not posted within the required 10 calendar days.[27]

II. The Audit Procedures Did Not Address Key Issues

The audit report's discussion of Objective VIII shows that the audit procedures did not obtain information that is essential to evaluating Verizon's compliance Section 272(e)(1), which requires that Verizon "fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates."[28] Specifically, the service interval data in Table 14a of the audit report covers only special access services provided by Verizon to its Section 272 affiliates. The audit report does not provide information concerning special access services provided by Verizon "to itself," i.e., special access services that the BOC has provided directly to "retail" customers.

[24] Accounting Safeguards Order at ¶ 122.
[25] 47 U.S.C. § 272(b)(5).
[26] Audit report, Appendix A at 16.
[27] Audit report, Appendix A at 17.
[28] 47 U.S.C. § 272(e)(1).

The Commission should require Verizon to supply service interval data analogous to that shown in Table 14a for services provided by the BOC directly to retail customers.[29] Investigation of the service intervals for special access services provided by the BOC directly to retail customers is critical because the New York Public Service Commission has found that Verizon "treats other carriers less favorably than its retail customers."[30] At a minimum, the Commission should investigate whether it is Verizon's practice, when the BOC markets and sells interLATA services on behalf of the Section 272 affiliate, for the BOC to provision the special access component of an interexchange service directly to the customer on a retail basis, rather than to the Section 272 affiliate on a "wholesale" basis. Any such "retail" provisioning of the special access component of an interexchange service would not be reflected in the "Verizon" column of Table 14a of the audit report.

Similarly, the audit procedures are not sufficient to determine whether Verizon has evaded its Section 272 nondiscrimination obligations by using other nonregulated affiliates to provide services to its Section 272 affiliates. The audit report lists, at a high level, numerous services that Verizon nonregulated affiliates have provided to Verizon Section 272 affiliates, particularly VSSI,[31] but the audit procedures do not appear to have been designed to establish whether those services were provided in a manner consistent with Section 272(c)(1). The Commission had previously indicated, in the

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[29] Verizon committed, in its Section 271 application, to providing such data. Attachment J to the Browning Declaration, which shows Verizon's proposed disclosure format, indicates that Verizon would retain and disclose data concerning services provided to the "BOC/BOC Affiliate," not just BOC Affiliates.

[30] New York Public Service Commission, Opinion and Order Modifying Special Services Guidelines for Verizon New York Inc, Conforming Tariff, and Requiring Additional Performance Reporting, Case Nos. 00-C-2051, 92-C-0665 at 7 (June 15, 2001).

Second Louisiana 271 Order, that "transactions between [272 affiliates] and [] other nonregulated affiliates [are] the proper subject of the biennial audits, which require a thorough examination of all affiliate transactions in order to evaluate compliance with the statute and our rules."[32] Pursuant to the Non-Accounting Safeguards Order, even administrative and support services are subject to the Section 272(c)(1) nondiscrimination requirements.[33]

[31] Audit Report, Appendix A at 4, Appendix C at 5.
[32] BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, Memorandum Opinion and Order, 13 FCC Rcd 20599, 20974 (1998).
[33] Non-Accounting Safeguards Order at ¶ 217.

III. Conclusion

The Commission should initiate enforcement action against Verizon for failing to comply with the requirements of Section 272 and Commission regulations promulgated thereunder.

Respectfully submitted,
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